



IN THE COMPETITION
APPEAL TRIBUNAL

Case Numbers: 1151/3/3/10
1168/3/3/10
1169/3/3/10

BETWEEN:

BRITISH TELECOMMUNICATIONS PLC

- and -

EVERYTHING EVERYWHERE LIMITED

Appellants

- v -

OFFICE OF COMMUNICATIONS

Respondent

TELEFÓNICA O2 UK LIMITED
VODAFONE LIMITED
CABLE & WIRELESS UK
HUTCHISON 3G UK LIMITED
OPAL TELECOM LTD

Interveners

ORDER

1. In this Order:

- (1) the **080 Determination** shall mean the determination issued by OFCOM on 5 February 2010 in respect of certain disputes between BT and various mobile network operators regarding BT's termination charges for 080 calls;
- (2) the **0845/0870 Determination** shall mean the determination issued by OFCOM on 10 August 2010 in respect of certain disputes between BT

and various mobile network operators regarding BT's termination charges for 0845 and 0870 calls; the **2003 Act** means the Communications Act 2003;

- (3) **BT** means British Telecommunications plc;
- (4) The **Judgment** means the Judgment in these appeals dated 1 August 2011 ([2011] CAT 24);
- (5) The **MNOs** means Everything Everywhere Limited (**EE**), Telefónica O2 UK Limited (**O2**), Vodafone Limited (**Vodafone**) and Hutchison 3G UK Limited (**H3G**);
- (6) **NCCN 956** means Network Charge Change Notice 956 issued by BT on and submitted to OFCOM on 3 June 2009, with an effective date of 1 July 2009 or such other Network Charge Change Notice validly issued in succession to NCCN 956 (as agreed by the parties or as determined by OFCOM);
- (7) **NCCN 985** means Network Charge Change Notice 985 issued by BT on and submitted to OFCOM on 2 October 2009, with an effective date of 1 November 2009 or such other Network Charge Change Notice validly issued in succession to NCCN 985 (as agreed by the parties or as determined by OFCOM);
- (8) **NCCN 986** means Network Charge Change Notice NCCN 986 issued by BT on and submitted to OFCOM on 2 October 2009, with an effective date of 1 November 2009 or such other Network Charge Change Notice validly issued in succession to NCCN 986 (as agreed by the parties or as determined by OFCOM);
- (9) **Period One** means:
 - (i) In the case of NCCN 956, the period between 1 July 2009 and 5 February 2010;
 - (ii) In the case of NCCN 985 and NCCN 986, the period between 1 November 2009 and 10 August 2010;

(10) **Period Two** means:

- (i) In the case of NCCN 956, the period between 6 February 2010 and 1 August 2011;
- (ii) In the case of NCCN 985 and NCCN 986, the period between 11 August 2010 and 1 August 2011;

(11) **Prices Charged** refers to:

- (i) In the case of Period One, the prices charged to callers for 080, 0845 and 0870 calls as published by the MNOs in accordance with General Condition 10 alternatively (where the MNOs can demonstrate that these were charged) the bespoke or individual prices and tariffs for such calls;
- (ii) In the case of Period Two, the prices charged to callers for 080, 0845 and 0870 calls as published by the MNOs in accordance with General Condition 10;

(12) The **Ruling** means the Ruling in these appeals dated 12 August 2011 ([2011] CAT 26).

- 2. This Order is intended to give effect to the directions contained in Section N of the Judgment and the Ruling, and should be read in the light of the Judgment and the Ruling.
- 3. BT's appeals in respect of the 080 Determination and the 0845/0870 Determination be allowed.
- 4. EE's appeal in respect of the 0845/0870 Determination be dismissed.
- 5. The Tribunal, having considered in accordance with section 195(4) of the 2003 Act what directions are appropriate to give effect to the decisions set out in its Judgment hereby remits the 080 Determination and the 0845/0870 Determination to OFCOM with the following directions:
 - (1) That NCCN 956, NCCN 985 and NCCN 986 do stand.
 - (2) That the MNOs do pay to BT, by way of an adjustment for an underpayment or overpayment in accordance with section 190(2)(d) of the 2003 Act:

- (i) In the case of Period One, the termination rates due under NCCN 956, NCCN 985 and NCCN 986 (as the case may be) calculated by reference to the Prices Charged by the MNOs to callers for 080, 0845 and 0870 calls (as the case may be) during this period.
 - (ii) In the case of Period Two, the termination rates due under NCCN 956, NCCN 985 and NCCN 986 (as the case may be) calculated by reference to the Prices Charged by the MNOs to callers for 080, 0845 and 0870 calls (as the case may be) as at the earlier of:
 - (a) 31 October 2011;
 - (b) A date not later than 31 October 2011, being a date selected by an MNO and notified by that MNO to both OFCOM and to BT not less than 7 days before that date.
 - (3) That no interest shall be payable in respect of such amounts.
6. The amounts payable pursuant to paragraph 5(2) above are to be calculated as follows:
- (1) Within 28 days of 31 October 2011, each MNO shall notify to BT its calculation of the sum of any under or overpayment due as between BT and that MNO, providing sufficient detail to enable BT to see how that sum has been arrived at and providing copies of all relevant documents;
 - (2) Within 28 days of receipt of that notification, BT shall notify each MNO either that it accepts that the sum notified to it by each MNO is correct or, if it does not accept it as correct, setting out its own calculation of the sum, providing sufficient detail to enable the MNO to see how that sum has been arrived at and providing copies of all relevant documents;
 - (3) OFCOM shall, as soon as reasonably practicable thereafter, order the payment of any sum agreed to be correct in those cases where there is agreement between the parties and, in any case where the parties are not agreed, OFCOM shall order such payments between the parties as it considers appropriate having regard to the respective notifications of the parties and such submissions as OFCOM (in its discretion) may require.

7. There shall be liberty to apply.

Marcus Smith QC
Chairman of the Competition Appeal Tribunal

Made: 12 August 2011
Drawn: 12 August 2011